

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| LENDELL K. SANDERS, |) | CIVIL NO. 1:14-cv-00454 |
| |) | |
| Defendant. |) | |

COMPLAINT

The United States of America, as authorized and requested by the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States of America, under 26 U.S.C. Sections 7401, 7402(a), and 7403, for its complaint, alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action brought by the United States of America to reduce to judgment certain federal income tax assessments made against Lendell K. Sanders for the years 1996-2001, 2003, 2005, and 2006, and to recover the costs of litigation and enforcement of the claim of such debts.
2. This Court has jurisdiction of this action under 26 U.S.C. Sections 7402 and 7403 and 28 U.S.C. Sections 1340 and 1345.
3. Venue is proper in this judicial district under 28 U.S.C. Sections 1391 and 1396.

THE PARTIES

4. Plaintiff is the United States of America.
5. Defendant Lendell K. Sanders is the taxpayer and resides within the jurisdiction of this Court.

COUNT I

(Judgment for Unpaid Tax Assessments)

6. The United States re-alleges paragraphs 1 through 5.
7. On the various dates and in the amounts set forth below, a delegate of the Secretary of the Treasury made assessments against Charles G. Sanders (now deceased) and Lendell K. Sanders for federal income taxes for years 1996-2001, 2003, 2005, and 2006:

| TYPE OF TAX | TAX PERIOD | DATE OF ASSESSMENT | AMOUNT DUE THROUGH JANUARY 13, 2014 |
|-------------|------------|--------------------|--|
| 1040 | 1996 | 10/04/2004 | \$41,152.11 |
| 1040 | 1997 | 10/04/2004 | \$40,101.49 |
| 1040 | 1998 | 10/04/2004 | \$21,111.05 |
| 1040 | 1999 | 03/28/2005 | \$15,180.86 |
| 1040 | 2000 | 02/23/2004 | \$6,749.38 |
| 1040 | 2001 | 03/01/2004 | \$22,594.16 |
| 1040 | 2003 | 08/16/2004 | \$17,217.94 |
| 1040 | 2005 | 12/11/2006 | \$129.68 |
| 1040 | 2006 | 02/04/2008 | \$6,436.97 |
| TOTAL: | | | \$170,673.64 |

[See Certificates of Assessments, Payments and Other Specified Matters (Form 4340) for Charles G. and Lendell K. Sanders for years 1996-2001, 2003, 2005, and 2006 attached as Government Exhibits 1-9, and Account Transcripts for years 1990, 1992-1996 and 2001-2007 for Charles G. and Lendell K. Sanders attached as Government Exhibits 10-18.]

8. Despite notice of the assessments described in paragraph 7 and demand for payment, Lendell K. Sanders has failed to fully pay the assessments and is indebted to the United States in the unpaid balance of the assessments, less payments and credits, plus accruals, including statutory interest and applicable penalties, as of January 13, 2014, of \$170,673.64, plus interest and other additions to tax allowed by law accruing thereafter. [See Account Transcripts for years 1990, 1992-1996 and 2001-2007 attached as Government Exhibits 10-18.]

9. By virtue of Lendell K. Sanders' neglect or failure to pay in full, after such notice and demand, the assessments described in paragraph 7, a lien arose in favor of the United States, under 26 U. S. C. Sections 6321 and 6322, as of the dates of assessment in an amount equal to the unpaid assessments, plus statutory additions, against all property and rights to property of Lendell K. Sanders.

COUNT II

AFFIRMATIVE ALLEGATIONS THAT THE STATUTE OF LIMITATIONS FOR COLLECTION HAS NOT EXPIRED

10. Generally, the United States may bring a suit to reduce the tax assessment to judgment within 10 years of the date of the assessment. 26 U.S. C. § 6502(a)(1). The statute of limitations, however, is suspended during the period when a proposed offer-in-compromise (OIC) or installment agreement is pending with the Secretary because the Secretary is barred from making

a levy during this period. 26 U.S.C. 6331 (k)(1)(A) and (2)(A) provide that no levy may occur when an OIC or installment agreement is pending. 26 U.S.C. § 6331(I) (5) provides that "[t]he period of limitations under section 6502 shall be suspended for the period during which the Secretary is prohibited under this subsection from making a levy." Furthermore, the statute of limitations is suspended for a period of 30 days after an installment agreement is terminated by the Secretary. 26 U.S.C. § 6331(k)(2)(d).

11. Lendell K. Sanders, and her former husband, Charles G. Sanders, who is now deceased, submitted a proposed installment agreement on February 22, 2005, which was accepted by the IRS on December 6, 2005 - a period of 277 days. Lendell and Charles Sanders defaulted on the installment agreement on October 15, 2008. The 277 days during which the installment agreement was pending, and the 30 days after the installment agreement was terminated, serve to extend the collection statute expiration date for assessments made prior to submission of the installment agreement by 307 days. Assessments made during the period in which the installment agreement was pending are only extended by the number of days the proposed installment agreement remained pending after the assessments were made plus 30 days. Thus, the earliest collection statute expiration date for the assessments for all the tax years in this collection action is for the 2000 tax year, which is December 27, 2014. Accordingly, this collection action is filed timely.

WHEREFORE, the United States of America prays that this Court:

A. enter judgment in its favor against Lendell K. Sanders for federal income taxes for years 1996-2001, 2003, 2005, and 2006, in the amount of \$170,673.64, as of January 13, 2014, plus interest and additions as provided by law until paid; and

B. grant its costs of this action and such other relief as the Court deems just and proper.

STEVEN C. YARBROUGH
Acting United States Attorney

/s/ Waymon G. DuBose, Jr.
WAYMON G. DuBOSE, JR
Trial Attorney, Tax Division
State Bar No. 06152000
U.S. Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
Telephone: (214) 880-9726
Facsimile: (214) 880-9741
Email: waymon.g.dubose@usdoj.gov

ATTORNEYS FOR THE UNITED STATES